

201309672
Richard Thomas

This case involves a well-publicized incident in which two officers detained a man in an elevator and used what the CCRB (and an NYPD Administrative Law Judge) deemed to be a chokehold. The incident was captured on video. The NYPD Commissioner, James O'Neill, overturned the Administrative Law Judge and ruled that Detective Thomas's actions were proper. The NYPD then released the video. Multiple news outlets covered the incident and ran the video, which is publicly available below:

<https://www.nydailynews.com/new-york/nypd-releases-video-proof-didn-chokehold-suspect-article-1.3455721>

<https://abc7ny.com/chokehold-illegal-surveillance-video-nypd/2360162/>

What was not reported by the NYPD at the time was the fact that in his initial interview, Detective Thomas testified to the CCRB that he had not placed an article of clothing on the man's face, but merely held up an article of clothing to keep the man from spitting.

Upon review of the video, which shows Detective Thomas behind the man, reaching around him to hold the piece of clothing over the man's face, the CCRB found that the statement he had not placed the clothing directly on the man's face to be a false official statement.

Commissioner O'Neill did not address the false statement allegation in his decision.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kevin O'Connor (Int)	Team: APU	CCRB Case #: 201309672	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wed, 10/09/2013 8:15 PM	Location of Incident: [REDACTED]	Precinct: 88	18 Mo. SOL 04/09/2015	EO SOL 4/9/2015	
Date/Time CV Reported Wed, 10/09/2013 11:25 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/15/2013 4:06 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Walter Mikowski	05848	§ 87(2)(b)	103 DET
2. DT3 Richard Thomas	01954	§ 87(2)(b)	103 DET
3. Officers			
4. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DTS David Halinski	06837	§ 87(2)(b)	ESS 08
2. DTS Scott Wells	05042	§ 87(2)(b)	ESS 08

Officer(s)	Allegation	Investigator Recommendation
A . DT3 Walter Mikowski	Off. Language: Det. Walter Mikowski made remarks to § 87(2)(b) based upon his perceived sexual orientation inside § 87(2)(b) in Brooklyn.	A . § 87(2)(g)
B . DT3 Richard Thomas	Off. Language: Det. Richard Thomas made remarks to § 87(2)(b) based upon his perceived sexual orientation inside § 87(2)(b) in Brooklyn.	B . § 87(2)(g)
C . DT3 Walter Mikowski	Discourtesy: Det. Walter Mikowski spoke discourteously to § 87(2)(b) inside § 87(2)(b) in Brooklyn.	C . § 87(2)(g)
D . An officer	Force: An officer used a chokehold against § 87(2)(b) inside § 87(2)(b) in Brooklyn.	D . § 87(2)(g)
E . DT3 Richard Thomas	Force: Det. Richard Thomas restricted § 87(2)(b) breathing inside § 87(2)(b) in Brooklyn.	E . § 87(2)(g)
F . DT3 Richard Thomas	Force: Det. Richard Thomas used a chokehold against § 87(2)(b) inside § 87(2)(b) in Brooklyn.	F . § 87(2)(g)
G . Officers	Force: Officers used physical force against § 87(2)(b) inside § 87(2)(b) in Brooklyn.	G . § 87(2)(g)
H . DT3 Richard Thomas	Force: Det. Richard Thomas used physical force against § 87(2)(b) outside § 87(2)(b) in Brooklyn.	H . § 87(2)(g)
I . DT3 Walter Mikowski	Force: Det. Walter Mikowski used a chokehold against § 87(2)(b) outside § 87(2)(b) in Brooklyn.	I . § 87(2)(g)

Officer(s)	Allegation	Investigator Recommendation
J . DT3 Walter Mikowski	Force: Det. Walter Mikowski used physical force against § 87(2)(b) outside § 87(2)(b) in Brooklyn.	J . § 87(2)(g)
K . Officers	Force: Officers used physical force against § 87(2)(b) outside § 87(2)(b) in Brooklyn.	K . § 87(2)(g)
L . DT3 Richard Thomas	Other: Det. Richard Thomas intentionally provided a false official statement to the CCRB when he stated that he did not cover § 87(2)(b) face with an article of clothing.	L . § 87(2)(g)

Case Summary

On October 9, 2013, Lt. Joseph Davids of the 88th Precinct called the Internal Affairs Bureau and filed a complaint on behalf of § 87(2)(b) (IAB log # 13-43221) (encl. 4A-B). This complaint was received at the CCRB on October 15, 2013 (encl. 5A-B).

On October 9, 2013, at approximately 8:15 p.m., Det. Richard Thomas and Det. Walter Mikowski arrived at § 87(2)(b) in Brooklyn to arrest § 87(2)(b). The following allegations resulted:

- **Allegation A- Offensive Language: Det. Walter Mikowski made remarks to § 87(2)(b) based upon his perceived sexual orientation inside § 87(2)(b) in Brooklyn.**
- **Allegation B- Offensive Language: Det. Richard Thomas made remarks to § 87(2)(b) based upon his perceived sexual orientation inside § 87(2)(b) in Brooklyn.**
- **Allegation C- Discourtesy: Det. Walter Mikowski spoke discourteously to § 87(2)(b) inside § 87(2)(b) in Brooklyn.**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation D- Force: An officer used a chokehold against § 87(2)(b) inside § 87(2)(b) in Brooklyn.**
- **Allegation G- Force: Officers used physical force against § 87(2)(b) inside § 87(2)(b) in Brooklyn.**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation E- Force: Det. Richard Thomas restricted § 87(2)(b)'s breathing inside § 87(2)(b) in Brooklyn.**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation F- Force: Det. Richard Thomas used a chokehold against § 87(2)(b) inside § 87(2)(b) in Brooklyn.**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation H- Force: Det. Richard Thomas used physical force against § 87(2)(b) outside § 87(2)(b) in Brooklyn.**
- **Allegation I- Force: Det. Walter Mikowski used a chokehold against § 87(2)(b) outside § 87(2)(b) in Brooklyn.**
- **Allegation J- Force: Det. Walter Mikowski used physical force against § 87(2)(b) outside § 87(2)(b) in Brooklyn.**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

- **Allegation K- Force: Officers used physical force against § 87(2)(b) outside § 87(2)(b) in Brooklyn.**
§ 87(2)(g)
- **Allegation L- Other: Det. Richard Thomas intentionally provided a false official statement to the CCRB when he stated that he did not cover § 87(2)(b)'s face with an article of clothing.**
§ 87(2)(g)

This case was initially assigned to Inv. Emmanuel Cabrera. Upon his resignation, it was reassigned to Inv. Kevin O'Connor on November 18, 2013.

This case was not eligible for mediation.

Results of Investigation

§ 87(2)(b) Surveillance Footage

Video footage of the incident was obtained on February 7, 2014. The footage has no audio and is approximately thirteen minutes in length. The video could not be attached or copied to a disc as the video could not be decoded.

Lobby/Elevator Surveillance Footage

(It is noted on the surveillance footage that these times are 20 minutes off).

At 19:50:51, Det. Mikowski and Det. Thomas enter the lobby. At 19:51:59, Det. Mikowski walks to the rear of the lobby, followed by Det. Thomas at 19:52:55. At 20:02:22, § 87(2)(b) walks through the lobby without handcuffs and Det. Mikowski is walking behind him. At 20:02:37, § 87(2)(b) enters the elevator with Det. Mikowski, Det. Thomas, and caseworkers § 87(2)(b) and § 87(2)(b). At 20:03:23, all the individuals exit the elevator.

At 20:10:59, § 87(2)(b) enters the elevator in handcuffs with the same parties present. Det. Thomas is holding an object in his hand. At 20:11:23, § 87(2)(b) turns around to talk to Det. Mikowski and jerks his body backwards into Det. Mikowski. At 20:11:25, Det. Thomas grabs the back of § 87(2)(b)'s neck. At 20:11:26, § 87(2)(b) turns and looks at Det. Thomas and moves his head forward toward Det. Thomas. At 20:11:27, Det. Thomas covers § 87(2)(b)'s mouth with an article of clothing and grabs the back of his neck.

At 20:11:29, Det. Thomas rubs the piece of clothing into § 87(2)(b)'s face as § 87(2)(b) moves his head side to side. At 20:11:32, § 87(2)(b) is placed against the elevator wall. At 20:11:36, § 87(2)(b) jerks his left elbow back toward Det. Thomas' face but does not appear to make contact. At 20:11:38, Det. Thomas places the article of clothing on § 87(2)(b)'s face. At 20:11:40, Det. Thomas places his left arm around § 87(2)(b)'s neck. At 20:11:56, § 87(2)(b) exits the lobby while being escorted by Det. Thomas and Det. Mikowski.

§ 87(2)(b) Surveillance Footage

At 20:22:04, § 87(2)(b) exits the elevator with Det. Mikowski, Det. Thomas, § 87(2)(b) and § 87(2)(b). At 20:22:19, § 87(2)(b) enters his apartment. At 20:22:20, Det. Mikowski enters § 87(2)(b)'s apartment as Det. Thomas stands in the doorway. At 20:22:34, Det. Thomas enters the apartment. At 20:26:46, § 87(2)(b) comes out of the apartment in handcuffs with Det. Thomas on one knee. At 20:26:47, § 87(2)(b) falls onto the floor onto his stomach and Det. Thomas trips on top of him. It is unclear if § 87(2)(b) was tripped or fell.

At 20:28:43, Det. Mikowski and Det. Thomas lift § 87(2)(b) up. § 87(2)(b) is walked towards the elevator at 20:29:47 and enters at 20:29:51.

Victim: § 87(2)(b)

- § 87(2)(b)
- § 87(2)(b)

Statements to Medical Personnel

§ 87(2)(b) was treated in the emergency room at § 87(2)(b) on § 87(2)(b). His chief complaint was that he was pushed down and assaulted by officers because he is gay.

Arrest Photo (Encl. 9)

§ 87(2)(b)'s arrest photo appears to show a black eye to § 87(2)(b)'s left eye.

Civilian Statement

§ 87(2)(b) was interviewed at the CCRB on October 24, 2013 (encl. 8A-I).

On October 9, 2013, at approximately 8:15 p.m., § 87(2)(b) heard a knock at the front door of his apartment, located at § 87(2)(b) in Brooklyn. § 87(2)(b) opened the door and was informed by his case workers, § 87(2)(b) and § 87(2)(b) that there was a detective waiting to see him downstairs. They walked to the first floor where two plainclothes officers were waiting. PO1, identified via investigation as Det. Walter Mikowski, was described as a tall white man in a suit and PO2, identified via investigation as Det. Richard Thomas, was described as a chubby white man in a suit with glasses.

The detectives said they were there to arrest him for sending threatening text messages to his brother. § 87(2)(b) requested to go to his residence to change his clothes and he was permitted to do so. § 87(2)(b) both detectives and caseworkers went to his apartment. Det. Mikowski and Det. Thomas followed him inside and § 87(2)(b) repeatedly told the detectives that he needed to know why he was being arrested. Both Det. Mikowski and Det. Thomas called § 87(2)(b) a "faggot."

§ 87(2)(b) picked out a pair of underwear to put on and asked the detectives to turn around while he put them on. When § 87(2)(b) verbally refused, Det. Mikowski said, "If you don't get your fucking clothes on, we're gonna drag you out the same fucking way you are," referring to the tank top and shorts § 87(2)(b) had been wearing. An officer, identified by § 87(2)(b) as Det. Mikowski but identified via investigation as Det. Thomas, pushed him against the wall and handcuffed him. Det. Thomas threw § 87(2)(b) onto the floor before picking him up and taking him through the doorway towards the hallway. Det. Thomas then tripped § 87(2)(b) onto the floor and placed his knee on top of § 87(2)(b)'s back.

§ 87(2)(b) told Det. Thomas, "Get the fuck off of me" and threatened to spit at the detectives. One of the detectives, who § 87(2)(b) could not recall, then proceeded to choke § 87(2)(b) as he was on the floor. § 87(2)(b) and § 87(2)(b) told the detectives to stop. § 87(2)(b) was eventually stood up and walked towards the elevator. Inside the elevator, Det. Thomas choked § 87(2)(b) by placing one hand on both sides of § 87(2)(b)'s neck, restricting § 87(2)(b)'s breathing. Det. Thomas then pushed § 87(2)(b) against the elevator wall until it reached the first floor. § 87(2)(b) did not make any statements or move his body inside the elevator and did not resist arrest at any point during the incident.

Upon reaching the lobby, § 87(2)(b) was pushed onto the floor by a detective he could not recall. § 87(2)(b) was taken outside as the caseworkers and two other members of § 87(2)(b)'s staff, § 87(2)(b) and § 87(2)(b) (last names unknown), followed them out. Once they got outside, § 87(2)(b) was pushed onto the ground and placed into the backseat of the detectives' vehicle. Det. Thomas and Det. Mikowski told § 87(2)(b) "When we close the door, we're gonna fuck you up even more because you're a faggot," and stated that they hate "faggots."

Det. Thomas opened the rear driver's side door and pulled § 87(2)(b) out from the vehicle and punched him once in the left eye with a closed fist. § 87(2)(b) began to bleed from under his left eye and started to scream. Det. Mikowski choked § 87(2)(b) by placing both of his hands around § 87(2)(b)'s neck and kned § 87(2)(b) several times in his left side. After screaming for approximately one minute, § 87(2)(b) lost consciousness and blacked out for approximately five to ten minutes.

When § 87(2)(b) regained consciousness, he was being pulled out of the vehicle outside § 87(2)(b) by his foot and also by his neck. § 87(2)(b) was thrown on the ground and was surrounded by several uniformed officers. § 87(2)(b) could not describe these officers but recalled that they had been wearing blue uniforms. Officers proceeded to stomp on § 87(2)(b)'s left arm several times. As § 87(2)(b) had been hit in the left eye, he had trouble seeing and did not recall which officers stomped on him.

§ 87(2)(b) was then strapped into a restraining blanket and was transported to § 87(2)(b).

Attempts to Contact Civilians

§ 87(2)(b)
Between October 30, 2013 and April 23, 2014, five calls were placed to § 87(2)(b) and voice messages requesting a call back were left on each occasion. A please call letter mailed to § 87(2)(b) on November 12, 2013 was returned to the CCRB under, "insufficient address, unable to forward." A NYC Department of Correction search conducted on September 27, 2014, confirmed that § 87(2)(b) is not currently incarcerated. To date, § 87(2)(b) has not made any attempt to contact the CCRB to provide a statement.

§ 87(2)(b)
A Lexis Nexis search for § 87(2)(b) yielded negative results. A NYC Department of Correction search conducted on September 27, 2014, confirmed that § 87(2)(b) is not currently incarcerated. To date, § 87(2)(b) has not made any attempt to contact the CCRB to provide a statement.

NYPD Statements:

Subject Officer: DETECTIVE RICHARD THOMAS

- § 87(2)(b) -old white man, 5'7" tall, 185 pounds, with blond hair and blue eyes.
- Det. Thomas worked from 12:15 p.m. on October 9, 2013 until 3 a.m. the following day. He was assigned as an investigator and worked with Det. Walter Mikowski. They were assigned to unmarked patrol vehicle number § 87(2)(b) and were in plainclothes.

Memo Book (Encl. 17A-C)

At 7:20 p.m., Det. Thomas was at § 87(2)(b) At 9 p.m., Det. Thomas was at § 87(2)(b).

CCRB Testimony (Encl. 18A-D)

Det. Thomas was interviewed at the CCRB on September 23, 2014. The video footage was presented to Det. Thomas at the conclusion of the interview. Det. Thomas had not seen the footage prior to his CCRB interview.

On October 9, 2013, at approximately 7:20 p.m., Det. Thomas and Det. Mikowski went to § 87(2)(b) in Brooklyn to arrest § 87(2)(b) was brought downstairs in a tank top and boxer shorts with his caseworkers so they agreed to have him change his clothes prior to going to the 103rd Precinct Stationhouse.

They went upstairs to his residence with the caseworkers and § 87(2)(b) requested to change in the bathroom. Det. Thomas told § 87(2)(b) that he could not for safety reasons and § 87(2)(b) became irate. Det. Thomas could not recall specific statements made. Det. Mikowski did not tell § 87(2)(b) “If you don’t get your fucking clothes on, we’re gonna drag you out the same fucking way you are.” Det. Thomas nor Det. Mikowski called § 87(2)(b) a “faggot” nor was there any discussion about § 87(2)(b)’s sexual orientation at any point during the incident.

After § 87(2)(b) refused to put his pants on, Det. Thomas attempted to place him in handcuffs. § 87(2)(b) resisted slightly but was soon placed in handcuffs without incident. Det. Thomas did not recall if Det. Mikowski assisted. Det. Thomas nor Det. Mikowski pushed § 87(2)(b) against the wall or onto the floor.

As § 87(2)(b) was being walked out of the room in handcuffs, he hurled himself onto the floor of the hallway. Det. Thomas became off-balanced, but did not fall on top of § 87(2)(b). Det. Thomas did not choke § 87(2)(b) and did not make contact with his neck at any point during the incident. At some point, § 87(2)(b) threatened to spit at Det. Thomas and Det. Mikowski. § 87(2)(b) eventually did spit at them, but Det. Thomas did not recall at which point this occurred. Det. Thomas did not recall what he did in response to § 87(2)(b)’s spitting.

Det. Thomas attempted to help § 87(2)(b) up, but § 87(2)(b) had a slick substance on his body which made it difficult for Det. Thomas to get a good grasp on him. Det. Thomas lifted § 87(2)(b) up by his handcuffs as that was the only means to help him up. Det. Thomas and Det. Mikowski then gathered some articles of clothing for § 87(2)(b) and walked to the elevator. Det. Thomas, Det. Mikowski, § 87(2)(b) and one or two caseworkers took the elevator downstairs to the lobby.

§ 87(2)(b) was irate inside the elevator, but Det. Thomas did not recall any statements that he made. Det. Thomas did not choke § 87(2)(b) inside the elevator and did not cover § 87(2)(b)’s mouth or nose, nor did he observe Det. Mikowski do so. Det. Thomas did not recall if he used an object to cover § 87(2)(b)’s mouth. § 87(2)(b)’s breathing was never restricted or affected and he had no trouble breathing. § 87(2)(b) was held against the wall of the elevator because the slick substance on his body made him hard to control.

However, upon viewing video footage of the incident, at 20:26:50, Det. Thomas identified himself as the officer holding onto § 87(2)(b) in the hallway. Det. Thomas stated that § 87(2)(b) voluntarily threw himself on the floor and that neither he nor § 87(2)(b) tripped on the rug outside § 87(2)(b)’s door. At 20:11:04, § 87(2)(b) was talking to his supervisor and then to Det. Mikowski inside the elevator, but Det. Thomas could not recall what the subjects of the conversations were.

At 20:11:30, Det. Thomas identified the object in his hand as either § 87(2)(b)’s pants or his shirt. Det. Thomas stated that he was holding the article of clothing in front of § 87(2)(b)’s face because § 87(2)(b) was spitting in his direction. Det. Thomas was telling him to calm down and when § 87(2)(b) jerks his elbow backwards, he attempts to spit at Det. Thomas again. Det. Thomas placed the article of clothing in front of § 87(2)(b)’s face to prevent him from spitting and was not trying to restrict his breathing. § 87(2)(b)’s breathing was not restricted as a result of this action, which was successful in stopping the threat of § 87(2)(b) spitting.

Det. Thomas went on to testify that he did not push § 87(2)(b) onto the floor of the lobby once he exited the elevator and did not observe Det. Mikowski do so. § 87(2)(b) was escorted outside by Det. Thomas and was not pushed onto the ground. § 87(2)(b) was placed in the detectives’ patrol vehicle. Det. Thomas did not tell § 87(2)(b) “When we close the door, we’re gonna fuck you up even more because you’re a faggot,” or that he “hates faggots” and did not hear Det. Mikowski make this statement.

§ 87(2)(b) continued to be irate inside the vehicle and prevented the detectives from placing the seatbelt on him by moving around. § 87(2)(b) attempted to headbutt Det. Thomas.

Det. Thomas tried to calm § 87(2)(b) down verbally but this was ineffective. Due to § 87(2)(b)'s behavior and a staff member telling him that § 87(2)(b) was off his psychiatric medication, § 87(2)(b) was going to be transported to the hospital instead of the 103rd Precinct.

Neither Det. Thomas nor Det. Mikowski punched § 87(2)(b) in the face, choked § 87(2)(b) inside the patrol vehicle, or kned § 87(2)(b). § 87(2)(b) never lost consciousness as a result of this incident.

EMS was called to the scene along with Lt. Joseph Davids, who subsequently called for ESU. Det. Thomas then passed out at the scene, due to his hypertension. Det. Thomas denied passing out due to a struggle with § 87(2)(b).

Det. Thomas was transported to § 87(2)(b) with Det. Mikowski and did not observe ESU officers interact with § 87(2)(b). Det. Thomas did not observe any injuries on § 87(2)(b) and when shown § 87(2)(b)'s arrest photo, which appears to show a black eye, stated that he did not observe that injury on him.

Subject Officer: DETECTIVE WALTER MIKOWSKI

- § 87(2)(b)-old white man, 5'10" tall, 185 pounds, with blond hair and blue eyes.
- Det. Mikowski worked from 3:45 p.m. on October 9, 2013 until 5:35 a.m. the following day. He was assigned as an investigator and worked with Det. Thomas. They were assigned to unmarked patrol vehicle number § 87(2)(b) and were in plainclothes.

Memo Book (Encl. 10A-B)

At 7:20 p.m., Det. Mikowski was en route to § 87(2)(b). At 8:05 p.m., there was a request for an additional unit at § 87(2)(b). At 8:15 p.m., Det. Mikowski went to § 87(2)(b).

DD5's (Encl. 12A-R)

The DD5's note that there was a threat made to § 87(2)(b) and that on September 26, 2013, an I-Card for § 87(2)(b) was submitted. Det. Mikowski attempted to apprehend § 87(2)(b) on September 27, 2013, but he was not home. On October 9, 2013, § 87(2)(b) was placed under arrest.

Complaint Report, Arrest Report and Criminal Court Complaint Report (Encl. 13A-C, 14A-C and 15A-B)

§ 87(2)(b), § 87(2)(a) CPL 160.50

Criminal Court Complaint Report (Encl. 15A-B)

§ 87(2)(b), § 87(2)(a) CPL 160.50

CCRB Testimony (Encl. 16A-D)

Det. Mikowski was interviewed at the CCRB on July 16, 2014. § 87(2)(g)

§ 87(2)(b) became irate and combative when he was told he could not use the bathroom and refused to be handcuffed. § 87(2)(b) resisted arrest by pulling his arms away from the detectives and said, "I'm gonna spit on you" and "I'm gonna headbutt you." Det. Mikowski and Det. Thomas were able to overcome § 87(2)(b)'s resistance by pulling § 87(2)(b)'s arms behind his back. Det. Mikowski did not push § 87(2)(b) against the wall and did not recall if

§ 87(2)(b) was placed against the wall. Det. Mikowski did not observe Det. Thomas push § 87(2)(b) against the wall.

As § 87(2)(b) was being led out of the apartment in handcuffs by Det. Mikowski and Det. Thomas, § 87(2)(b) either slipped, fell or tripped onto the hallway floor. Det. Mikowski did not choke § 87(2)(b) as he was on the floor of the hallway and did not observe Det. Thomas do so. § 87(2)(b) threatened to spit at the officers a numerous times.

§ 87(2)(b) would not stand still inside the elevator and threatened to spit at and headbutt the detectives. Det. Mikowski did not observe Det. Thomas cover § 87(2)(b)'s mouth or use an article of clothing to cover his mouth. § 87(2)(b)'s breathing was never affected.

Det. Mikowski did not push § 87(2)(b) onto the floor of the lobby on the way out of the building. Det. Mikowski did not push § 87(2)(b) onto the ground outside and did not observe Det. Thomas do so. § 87(2)(b) was then placed in the detectives' vehicle.

§ 87(2)(b) was uncooperative inside the vehicle. Det. Mikowski attempted to pass a seatbelt to Det. Thomas from the rear passenger side of the vehicle to the rear driver's side, but § 87(2)(b) prevented them from putting his seatbelt on by moving to the other side of the vehicle. § 87(2)(b) spit at the detectives while inside the car. Det. Mikowski did not observe Det. Thomas punch § 87(2)(b) in the face. Det. Mikowski did not choke or knee § 87(2)(b) inside the patrol vehicle. § 87(2)(b) did not lose consciousness inside the vehicle.

Lt. Joseph Davids responded to a call for assistance and attempted to calm § 87(2)(b) down from outside the vehicle as well as § 87(2)(b)'s caseworkers, but to no avail. Lt. Davids called for ESU. Det. Thomas told Det. Mikowski that he did not feel well and suddenly passed out onto the ground. Det. Mikowski believed that Det. Thomas passed out as a result of the struggle to place § 87(2)(b) in his seatbelt. ESU arrived several minutes later and Det. Mikowski left the scene to escort Det. Thomas to the hospital.

Det. Mikowski did not observe any injuries on § 87(2)(b) and § 87(2)(b) did not complain of any. When shown § 87(2)(b)'s arrest photo, which appears to show a black eye to § 87(2)(b)'s left eye, Det. Mikowski stated that he did not observe that injury on § 87(2)(b) at any point.

Det. Mikowski had not seen video footage of this incident. After viewing the section of the footage outside § 87(2)(b)'s apartment, Det. Mikowski identified himself and Det. Thomas. Det. Mikowski stated that as § 87(2)(b)'s caseworkers are leaning inside the apartment, that is when § 87(2)(b) asked to use the bathroom and subsequently became agitated. At 20:26:50, Det. Mikowski stated that § 87(2)(b) was trying to pull away and that an oily substance was covering his body, making him very slippery to handle.

At 20:11:30, Det. Mikowski recalled that § 87(2)(b) attempted to headbutt him inside the elevator. Det. Mikowski could not recall what Det. Thomas had in his hand and believed that it may have been § 87(2)(b)'s pants or shirt. Det. Mikowski also recalled that one of the caseworkers was attempting to calm § 87(2)(b) down inside the elevator. Det. Mikowski did not recall if § 87(2)(b) attempted to spit at Det. Thomas. Det. Mikowski stated that he and Det. Thomas were attempting to control § 87(2)(b) and could not recall in response to what action Det. Thomas covered § 87(2)(b)'s face with the possible article of clothing.

Witness Officers: DETECTIVE DAVID HALINSKI AND DETECTIVE SCOTT WELLS

- Det. Halinski is a § 87(2)(b)-old white man, 5'4" tall, 18 pounds, with brown hair and blue eyes.
- Det. Wells is a § 87(2)(b)-old white man, 5'7" tall, 180 pounds, with blond hair and blue eyes.
- Det. Halinski and Det. Wells worked from 3:15 p.m. until 11:50 p.m. on October 9, 2013. They were assigned to Sector A8. They were assigned to a marked patrol vehicle and were in uniform.

Memo Book (Encl. 19A-B and 21A-B)

At 8:19 p.m., there was an EDP at § 87(2)(b)

CCRB Testimony (Encl. 20 A-C and 22A-C)

Det. Halinski and Det. Wells were interviewed at the CCRB on September 10, 2014.

Det. Halinski and Det. Wells responded to a call regarding an EDP at

§ 87(2)(b) in Brooklyn. An officer informed them that § 87(2)(b) was off his medication and had fought violently with officers and that an officer was en route to the hospital. Det. Halinski and Det. Wells went to the patrol vehicle to establish a dialogue with § 87(2)(b) but it was ineffective. § 87(2)(b) had a small amount of blood coming from his face, but neither officer recalled from where the blood was coming from.

§ 87(2)(b) was physically removed from the vehicle, placed on the ground and placed into a restraining device. Neither Det. Halinski nor Det. Wells stomped on § 87(2)(b) and did not observe any other officer do so.

Medical Records

§ 87(2)(b) was treated in the emergency room at § 87(2)(b) on § 87(2)(b). He was diagnosed with an abrasion to an unspecified site on his body and was not prescribed medication.

NYPD Documents

Event Report (Encl. 25A-B)

At 8:15 p.m., the 103rd Precinct Detective Squad requested EMS personnel to respond to the scene for an EDP prisoner. One member of the service fainted at the location and was being taken to § 87(2)(b).

ESU Report (Encl. 27A-C)

A request for ESU was made in regard to an EDP prisoner. ESU was advised by a lieutenant on scene that the prisoner was spitting at officers. A small amount of blood was observed on the prisoner's face. The prisoner was removed from the rear of the vehicle without incident.

103rd Precinct Command Log Entry (Encl. 28)

§ 87(2)(b)'s arrest on October 9, 2013 was entered into the command log at 6 a.m. on October 10, 2013. Det. Mikowski was assigned the arrest. § 87(2)(b)'s physical condition is listed as good.

Arrest for Incident and Disposition

- An Office of Court Administration records search for § 87(2)(b)'s arrest yielded the result, "no defendant found on file."

Status of Civil Proceedings (Encl. 32)

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of March 4, 2014, two months after the filing deadline, with regard to the incident.

Civilian Criminal History (Encl. 31)

- As of September 26, 2014, Office of Court Administration records reveal the following criminal convictions for § 87(2)(b)
 - § 87(2)(b)

Civilian CCRB History (Encl. 3)

- This is the first CCRB complaint filed by § 87(2)(b)

Subject Officers CCRB History (Encl. 2A-B)

- Det. Thomas has been a member of the service for seventeen years and there are no substantiated CCRB allegations against him.
- Det. Mikowski has been a member of the service for thirteen years and there are no substantiated CCRB allegations against him.

Conclusion

Identification of Subject Officers

- § 87(2)(b) identified Det. Mikowski and Det. Thomas as the officers who used offensive language towards him, spoke discourteously towards him, placed him in a chokehold and used physical force against him. As such, **Allegations A, B, C, E, F, H, I and J** are being pleaded against them.
- § 87(2)(b) could not recall the officer who choked him in the hallway outside his apartment, the officers who threw him on the floor of the lobby and on the ground outside, and the officers who stomped on him. As such, **Allegation D** is pled to an officer and **Allegations G and K** are pled to officers.

Allegations Not Pleased

- § 87(2)(b)'s allegation of discourtesy against Det. Thomas is subsumed under the more egregious offensive language allegation.
- As Det. Thomas and Det. Mikowski subsequently used physical force against § 87(2)(b) inside the patrol vehicle, no threat of force allegation is being pleaded.

Investigative Findings and Recommendations

Allegation A- Offensive Language: Det. Walter Mikowski made remarks to § 87(2)(b) based upon his perceived sexual orientation inside § 87(2)(b) in Brooklyn.

Allegation B- Offensive Language: Det. Richard Thomas made remarks to § 87(2)(b) based upon his perceived sexual orientation inside § 87(2)(b) in Brooklyn.

Allegation C- Discourtesy: Det. Walter Mikowski spoke discourteously to § 87(2)(b) inside § 87(2)(b) in Brooklyn.

§ 87(2)(b) alleged that after requesting that Det. Mikowski and Det. Thomas turn around as he changed his clothes, both detectives called him a "faggot." Det. Mikowski then said, "If you don't put your fucking clothes on, we're gonna drag you out the same fucking way you are." § 87(2)(b) also alleged that before he was placed in the detectives' patrol vehicle, Det. Mikowski and Det. Thomas told him, "When we close the door, we're gonna fuck you up even more because you're a faggot." They also told § 87(2)(b) that they hate "faggots."

Det. Mikowski and Det. Thomas denied making any of the aforementioned statements and stated that there was no discussion about § 87(2)(b)'s sexual orientation at any point during the incident. § 87(2)(b) and § 87(2)(b) who were present during a majority of the incident, could not be reached to provide witness testimony.

§ 87(2)(g)

Allegation D- Force: An officer used a chokehold against § 87(2)(b) inside § 87(2)(b) in Brooklyn.

Allegation G- Force: Officers used physical force against § 87(2)(b) inside § 87(2)(b) in Brooklyn.

§ 87(2)(b) alleged that after he was tripped onto the floor outside his apartment, an officer that he could not recall, choked him. § 87(2)(b) also alleged that as he was being walked out of the lobby, he was thrown onto the floor by officers.

Det. Mikowski and Det. Thomas denied choking § 87(2)(b) or throwing him onto the floor of the lobby. Surveillance footage of the incident shows the entirety of both § 87(2)(b) and the detectives' interaction on the § 87(2)(b) hallway as well as the lobby of the building. Neither Det. Thomas nor Det. Mikowski choked § 87(2)(b) as he lay on the floor of the sixth floor hallway and neither detective threw § 87(2)(b) onto the floor of the lobby as he was being escorted outside.

§ 87(2)(g)

Allegation E- Force: Det. Richard Thomas restricted § 87(2)(b)'s breathing inside § 87(2)(b) in Brooklyn.

Video footage clearly shows Det. Thomas placing an article of clothing over § 87(2)(b)'s nose and mouth, restricting his breathing.

§ 87(2)(b) admitted that he repeatedly threatened to spit at the officers prior to the clothing being placed over his face. Officers said that immediately prior to the restriction, § 87(2)(b) sharply turned his head toward Det. Thomas in an apparent attempt to spit on him.

Officers are strongly discouraged from acts that would restrict the breathing of a person in custody. See NYPD Patrol Guide Procedure 203-11 (encl. 1A-B). Specifically, they are directed to make every effort to avoid tactics which may result in chest compression and they are ordered to position subdued persons so as to promote free breathing. Id.

§ 87(2)(g)

§ 87(2)(g)

Allegation F- Force: Det. Richard Thomas used a chokehold against § 87(2)(b) inside § 87(2)(b) in Brooklyn.

§ 87(2)(b) alleged that inside the elevator, Det. Thomas placed him in a chokehold by placing one hand on both sides of § 87(2)(b)'s neck, restricting his breathing. Det. Thomas and Det. Mikowski denied the chokehold. Video footage appears to show Det. Thomas placing his left arm around § 87(2)(b)'s neck inside the elevator. § 87(2)(g)

Members of the New York City Police Department will not use chokeholds. A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. NYPD Patrol Guide Procedure 203-11 (encl. 1A-B).

As mentioned above, Det. Thomas covered § 87(2)(b)'s nose and mouth with an article of clothing twice inside the elevator. Both times, the article of clothing is placed over § 87(2)(b)'s face, preventing air from getting through both of § 87(2)(b)'s airways.

§ 87(2)(g) Det. Thomas stated that he placed the article of clothing in front of § 87(2)(b)'s face because § 87(2)(b) had spit in his direction and was attempting to spit a second time. Det. Thomas stated that when individuals are spitting, as a police officer, he is trained to get out of the way or to turn the individual away. § 87(2)(g)

Allegation H- Force: Det. Richard Thomas used physical force against § 87(2)(b) outside § 87(2)(b) in Brooklyn.

Allegation I- Force: Det. Walter Mikowski used a chokehold against § 87(2)(b) outside § 87(2)(b) in Brooklyn.

Allegation J- Force: Det. Walter Mikowski used physical force against § 87(2)(b) outside § 87(2)(b) in Brooklyn.

§ 87(2)(b) alleged that after being placed inside the patrol vehicle, Det. Thomas pulled him out from the rear passenger's seat and punched him once in the left eye with a closed fist. Det. Mikowski then choked § 87(2)(b) with both hands around his neck and kned him several times in his left side.

§ 87(2)(b)'s arrest photo appears to show a black eye to his left eye. The ESU report noted that a small amount of blood was observed on § 87(2)(b)'s face. § 87(2)(b)'s medical records confirmed that he was diagnosed with an abrasion.

Det. Thomas denied punching § 87(2)(b) and Det. Mikowski denied using a chokehold against § 87(2)(b) or kneeling him in the left side. Both Det. Thomas and Det. Mikowski alleged that § 87(2)(b) was being highly uncooperative inside the vehicle and was preventing them from placing a seatbelt around his waist. § 87(2)(b) also spit at the detectives and threatened to headbutt them. Witness testimony could not be obtained as contact attempts were negative.

§ 87(2)(g)

Allegation K- Force: Officers used physical force against § 87(2)(b) outside § 87(2)(b) in Brooklyn.

§ 87(2)(b) alleged that after he lost consciousness, he was pulled out of the detectives' patrol vehicle by officers in blue uniforms outside § 87(2)(b). These officers, who § 87(2)(b) could not see, proceeded to stomp on his left arm several times.

Det. Halinski and Det. Wells, who pulled § 87(2)(b) out of the vehicle and placed him in a restraining device, denied stomping on him or observing any officer do so. Det. Thomas and Det. Mikowski were no longer at the scene when ESU arrived and did not observe any officer stomp on § 87(2)(b)

§ 87(2)(g)

Allegation L- Other: Det. Richard Thomas intentionally provided a false official statement to the CCRB when he stated that he did not cover § 87(2)(b)'s face with an article of clothing.

During his CCRB statement, Det. Thomas stated that he did not cover § 87(2)(b)'s face with an article of clothing and upon viewing video footage, stated that he held the clothing in front of § 87(2)(b)'s face.

The intentional making of a false official statement is prohibited and will be subject to disciplinary action. Patrol Guide Procedure Section 203-08 (encl.1C).

Surveillance footage of the incident provides evidence in direct contrast to Det. Thomas' statement. In the video, Det. Thomas can be seen covering § 87(2)(b)'s face on two separate occasions with an article of clothing inside the elevator.

§ 87(2)(g)

Team: _____

Investigator: _____
Signature _____ Print _____ Date _____

Supervisor: _____
Title/Signature _____ Print _____ Date _____

Reviewer: _____
Title/Signature _____ Print _____ Date _____

Reviewer: _____
Title/Signature _____ Print _____ Date _____



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

July 27, 2017

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Richard Thomas**
Tax Registry No. 919776
103 Detective Squad
Disciplinary Case No. 2015-12991

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on June 15th, August 11th, and August 30th, 2016, and was charged with the following:

DISCIPLINARY CASE NO. 2015-12991

1. Said Detective Richard Thomas, on or about October 9, 2013, at approximately 2015 hours, while assigned to the 103rd Precinct and on duty, in the vicinity of [REDACTED], Kings County, placed George Boland into a chokehold.
P.G. 203-11 **USE OF FORCE**

In a Memorandum dated November 28, 2016, Assistant Deputy Commissioner David S. Weisel found Detective Thomas Guilty of the sole Specification in Disciplinary Case No. 2015-12991. Having read the Memorandum and analyzed the facts of this matter, I disapprove the findings for Detective Thomas.

Detective Thomas utilized tactics while escorting a prisoner who was attempting to spit on both him and his partner. Detective Thomas' actions are well documented on the video entered into evidence, which showed the efforts Detective Thomas made to protect both himself and his partner from being spit upon. I have determined that Detective Thomas' actions, which did not appear to constitute an actionable chokehold, were reasonable, and necessary, under the totality of the circumstances. Therefore, I deem that Detective Thomas will be found Not Guilty.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

November 28, 2016

MEMORANDUM FOR: Police Commissioner

Re: Detective Richard Thomas
Tax Registry No. 919776
103 Detective Squad
Disciplinary Case No. 2015-12991

Charges and Specifications:

1. Said Detective Richard Thomas, on or about October 9, 2013, at approximately 2015 hours, while assigned to the 103rd Precinct and on duty, in the vicinity of [REDACTED], Kings County, placed George Boland into a chokehold.
P.G. 203-11 – USE OF FORCE

Appearances:

For the CCRB: Jonathan Fogel, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For Respondent: James Moschella, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

Hearing Dates:

June 15, August 11 and August 30, 2016

Decision:

Guilty

Trial Commissioner:

ADCT David S. Weisel

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on June 15, August 11 and August 30, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB called Elba Rosado and Cameron Love Hewitt (formerly known as [REDACTED] as witnesses. Respondent called Detective Walter Mikowski and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

It was undisputed that on October 9, 2013, at approximately 2000 hours, Respondent and Detective Walter Mikowski, assigned to the 103 Precinct Detective Squad, went to [REDACTED] in Brooklyn to arrest Cameron Love Hewitt, formerly known as [REDACTED] on an aggravated harassment complaint made by his brother.¹ Hewitt allegedly made 44 phone calls or text messages threatening his brother's life. The address in question was a supportive housing center for formerly homeless men known as [REDACTED] Hewitt lived in a room there. When the detectives arrived, they spoke to Hewitt's case manager, Elba Rosado.

It was further undisputed that when the detectives arrived, Hewitt was in a state of semi-undress because he was taking a shower. They nevertheless informed him that he was going to be arrested on the harassment complaint and allowed him to get fully dressed. Hewitt, however, did not want to get dressed in front of them. They replied that they could not let an arrestee out of their sight. Eventually, the detectives arrested Hewitt and took him to the elevator, wearing shorts and a T-shirt.

¹ Hewitt testified that he changed his name legally to avoid contact with his family (T. 91, 105-07).

What happened next was captured on the elevator's video surveillance camera (see CCRB Ex. 1, video; Ex. 2a-d, still photographs taken from video). Hewitt began arguing with the detectives and a fight ensued. Both detectives physically interacted with Hewitt. At one point, Respondent placed his arm in the vicinity of Hewitt's neck. The CCRB asserted that this constituted a prohibited chokehold. Respondent asserted that he did not use a chokehold, but rather was trying to subdue Hewitt in close quarters during a dangerous confrontation. The determination of this case rests both upon an interpretation of the video and the testimony at trial.

Rosado testified that many of her clients had [REDACTED] and that was something she helped them with. Hewitt was one of her clients. The detectives, one of whom was Respondent, met Rosado and Hewitt in the conference room. Rosado agreed that the detectives told Hewitt he could go upstairs and get dressed. According to Rosado, Hewitt nonetheless was irritated that he was getting arrested. In fact, he was "extremely angry and irritated" by the time he got to his room. He was bothered that the detectives followed him in while he was looking for clothes. Hewitt "was really rude and nasty," threatening the detectives with bodily harm like punching them in the face. Eventually the detectives arrested him and removed him from the unit. Hewitt was standing still, but remained "rude and obnoxious" so they placed him on the floor. Rosado testified that the detectives were squeezing Hewitt's arms and he was complaining the handcuffs were too tight. She did not hear the detectives call Hewitt anything derogatory. The detectives led him to the elevator, allowing Rosado to get Hewitt some money and a sweater because it was cool out. Hewitt threatened to spit on the detectives (T. [transcripts of June 15 and Aug. 11, 2016] 16-18, 20-24, 52-57, 61-62, 83-84).

Rosado testified that she, another employee, the detectives, and Hewitt all got into the elevator. Rosado was about two feet from Hewitt. Hewitt still was angry and irate, Rosado said. Hewitt said that he was going to punch the detectives in the face, head-butt and spit on them. In fact, Hewitt motioned to spit but nothing came out. Respondent placed Hewitt's sweater over

Hewitt's face in order to stop the spitting. In response, Hewitt "tries to like wiggle out." Rosado described Hewitt's movements as "just to like probably threaten the detective," but also as trying to free himself. Respondent "came and he put his arms around his neck in order to probably just to subdue him because [REDACTED] . . . looked as if he was coming at him." Respondent came from the side and placed his left arm around Hewitt's neck. Respondent's elbow was at Hewitt's neck and he was holding Hewitt tightly. Rosado and the other employee told Hewitt to calm down. The elevator doors opened and Respondent released his grip seconds afterward. The detectives took Hewitt to their vehicle (T. 25-32, 38-44, 57-59, 62-64, 66-68, 73-74, 76-84).

Rosado testified that she wrote a progress note the next morning concerning the incident. She conceded that she did not write in the note that Hewitt said he could not breathe. Nor did she characterize the detectives as using a chokehold or headlock (T. 69-76).

Hewitt testified that he was 26 years old. He had prior criminal convictions for petit larceny and fare beating. He testified that he originally was involved with [REDACTED] through an LGBT program. At the time of the incident he had lived there for about a year (T. 91-93).

Hewitt agreed that on October 9, 2013, he had just been released from custody on a shoplifting arrest, the same arrest that led to his petit larceny conviction. Respondent was one of the detectives that came to arrest him on his brother's complaint. Hewitt only had been home for maybe 20 minutes. Hewitt asked the detectives if they had proof of what he supposedly did, but they said they had to arrest him nonetheless. He denied that he was agitated at first. Hewitt did not want to get dressed in front of the detectives because he was not wearing underwear after having just gotten out of the shower. He denied having any lotion on his skin. Hewitt asserted that Respondent "started to get loud" and said that he "has to watch me to put some underwear on." Respondent denied Hewitt the opportunity to put underwear on in the bathroom because of the possibility that he could grab a weapon. On direct examination, Hewitt admitted that he was incredulous at this and started arguing. The detectives grabbed and pushed him toward the wall.

On cross, he said that he only got upset when he asked to put on a shirt and the detectives arrested him. He was handcuffed, taken down in the hallway, and then to the elevator. Hewitt admitted that he threatened to spit on the detectives because they were "physically putting their hands on me." He claimed that they punched and choked him inside his apartment and in the hallway, cursed at him and called him a faggot (T. 93-97, 110-27, 130, 133-34).

Inside the elevator, Hewitt testified, he spoke to the detectives but "there's nothing getting resolved." He admitted that he still was irritated because he kept asking why he was being arrested as there was no proof. He was getting angry and loud, and Rosado was trying to calm him down. Hewitt admitted jerking his head back toward one of the detectives. According to Hewitt, Respondent put his hand behind Hewitt's neck and squeezed his throat with his finger. Hewitt said that he was going to spit on Respondent. Respondent used the shirt that Rosado had taken for Hewitt and placed it over Hewitt's face. The detectives pushed Hewitt forward onto the elevator door and Respondent placed him in a chokehold. Hewitt contended that Respondent was squeezing so hard he thought the veins in his head would pop. He told Rosado that he could not breathe (T. 97-99, 101-05, 121, 136-47).

The testimonies of Mikowski and Respondent were largely similar. They testified that the 103 Squad knew based on an investigation card (I-card) that Hewitt had been arrested in Manhattan. When he was released from Rikers Island on October 9, 2013, Mikowski and Respondent went to his address at [REDACTED] Hewitt was agitated when they first spoke. They nevertheless allowed him to go upstairs and get dressed. Hewitt argued with them over the specifics of how and where he was to get changed. When Hewitt became more agitated and started cursing, the detectives handcuffed him. They had difficulty doing so due to the lotion or oil on his skin and Hewitt still was non-compliant. He threatened to spit on and head-butt the detectives, saying, "Just wait until the handcuffs come off." Respondent testified that he also was bothered by this but did not take it personally. Hewitt was taken to the floor outside the

apartment. The detectives denied punching or choking him, or making derogatory remarks. Mikowski nevertheless loosened Hewitt's handcuffs for him (T. 155-69, 181-84, 208-15, 240, 242-44; A. [transcript of Aug. 30, 2016] 222).

According to both detectives, when Hewitt continued his threats inside the elevator and jerked his body back, Mikowski held him and told him to stop. The [REDACTED] employees were trying to calm Hewitt down. Mikowski stood on Hewitt's right. Respondent was to the left. They grabbed Hewitt to stop him from wiggling. Mikowski never heard Hewitt say that he could not breathe, or observed this. He did not see Respondent place Hewitt in a chokehold but conceded that Respondent's arm was in the vicinity of Hewitt's neck. In Mikowski's view, the detectives were trying to control an emotionally disturbed person. Mikowski was bothered, but not angered, by the threats of spitting (T. 169-73, 177-79, 185, 187-94, 196-98, 215, 243-44).

Respondent testified that inside the elevator, Hewitt attempted to spit at him. In response, he covered Hewitt's mouth with a piece of Hewitt's clothing he brought for the prisoner to put on. Respondent denied that he was angry about the spitting or that he had a look of irritation on the video when Hewitt was arguing with Mikowski. Hewitt started to move his head and turn back toward Respondent. Respondent tried to "kind of push around on his shoulder" to keep Hewitt faced toward the elevator door. Noting that Hewitt was slippery due to the lotion, Respondent testified that he put his hand on the back of Hewitt's neck, and as Hewitt turned toward Respondent, "my hand slid around." He immediately removed his hand "and went back to the other side." Respondent asserted that his objective was to keep Hewitt under control and that he did not apply any pressure to his neck. Respondent's arm touched Hewitt's lower cheek and jaw, but the interior of his arm was never against Hewitt's throat. Respondent denied that Hewitt said he could not breathe and noted he was talking the whole time. As the door opened, the detectives regained control of Hewitt and walked him out (T. 215-25, 228-33, 245-46, 250-53, 255-58; A. 217-21).

Respondent's Exhibit A was surveillance video from the hallway. Department Exhibit 1 is the surveillance video from the elevator. At the outset, the detectives, Hewitt, and the two [REDACTED] employees enter. The view of the video is from behind them. Mikowski is holding onto Hewitt's arm. At 20:11:20, Hewitt turns to say something to Mikowski. At :24, Hewitt begins struggling and tries to backward-head-butt Mikowski. At :26, Respondent grabs the back of Hewitt's neck with his hand and covers Hewitt's mouth with an article of clothing. At :34, both detectives are holding Hewitt against the wall of elevator buttons. Respondent is on Hewitt's left and Mikowski on Hewitt's right. Hewitt strikes out with his left arm and shoulder against Respondent. At :37, Respondent, still holding the clothes, puts his left hand over Hewitt's mouth. At :39, Hewitt's head is tilted backward. At :41, Respondent's left arm is visible in the area of Hewitt's neck. It is flush against his jaw. Around :45, Respondent relaxes his arm, and then the elevator door opens on the first floor and the group leaves.

Patrol Guide § 203-11 (p. 1, para. 5) defines a chokehold as including, but not limited to, any pressure to the throat or windpipe, which "may prevent or hinder a person's breathing or reduce intake of air." This definition focuses on the conduct of the officer, not the intent. If the officer exerts pressure on the throat in the manner proscribed, that officer is subject to discipline. The length of time of the hold is not dispositive. *Case No. 2015-13121*, pp. 6-7 (Sept. 20, 2016).

The witnesses gave different descriptions of what the video depicted. Hewitt said that while Respondent's arm was on his neck, he could not breathe. Rosado did not actually testify that Hewitt said he could not breathe, but did say that Respondent was holding him tightly. On cross examination, when asked about her progress note concerning the incident, Rosado admitted that she did not memorialize Hewitt saying anything about not breathing, but testified this did not mean he never said it. Mikowski and Respondent denied that Hewitt said he could not breathe. Respondent denied that his arm added any such pressure to Hewitt's throat or windpipe, or that it prevented or hindered his breathing.

The video surveillance demonstrated by a preponderance of the evidence that Respondent placed his left arm around Hewitt's throat in a chokehold as defined by the Patrol Guide. The context of the crucial moments is that it was undisputed Hewitt threatened to spit at the detectives. At 20:11:36, Hewitt throws off Respondent's grip and turns his head toward him. At :37, Respondent places his left arm and the article of clothing over Hewitt's mouth. They struggle in this position for two to three seconds. At :41, Hewitt's head is looking straight up at the ceiling and Respondent's left arm is around his neck.

Even setting aside the testimony as to the effect this grip had on Hewitt's ability to breathe, it was evident from the video that this hold might have prevented or hindered Hewitt's breathing or reduced his intake of air. There are several additional factors that contribute to this conclusion. First, only about half of the width of Respondent's shirtsleeve is seen against Hewitt's neck. This indicates that the rest of it was not captured by the video because it was closer up against Hewitt's neck. Second, there is a degree of reflection in the polished metal of the elevator wall that shows Respondent's arm directly against Hewitt's neck. It was not, as Respondent testified, only "the lower cheek area and the jaw area." Thus the record established, by a preponderance of the evidence, that Respondent used his left arm to place Hewitt in a chokehold.

The Court is aware of Case No. 2014-11368, decided on July 25, 2016, in which the trial commissioner found that the accused officer used a chokehold but the Police Commissioner found him not guilty. The Police Commissioner noted that the officer "faced extreme danger during his lengthy struggle with an armed individual who was violently resisting arrest." In fact, the evidence from the case was that there was an angry and violent crowd during the arrest, that the officers were only able to get one cuff on the suspect, that the suspect bit an officer and was trying to obtain one of their firearms, and that the struggle lasted over 30 seconds before the chokehold began (Decision, pp. 11-12). The Police Commissioner stated that under the totality

of the circumstances, the officer's actions "were lawful, proper, reasonable, and necessary."

Finally, however, the Police Commissioner warned, "This decision does not sanitize or create a safe space for chokeholds generally but rather carves out an exception in very specific and exceptional circumstances" (Memorandum, p. 2).

Without a doubt, Respondent was dealing with a violent and uncooperative suspect in Hewitt. But the facts do not rise to the "very specific and exceptional circumstances" delineated in the case above. Hewitt was handcuffed and not armed. The critical struggle lasted less than ten seconds. There were two detectives there to maintain control in what was a confined small space. The necessity of blocking any spit coming from Hewitt could have been accomplished without the chokehold. In sum, the exception does not apply and Respondent is found Guilty.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on April 15, 1997. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

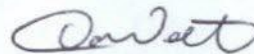
No penalty recommendation was made at trial, but the disciplinary cover sheet for the charges and specifications lists a recommendation of 10 vacation days. On the one hand, this tribunal remains mindful of the serious nature of chokeholds, underscored by the Patrol Guide's emphatic prohibition against their use. The penalty, however, must take into account the accused officer's history as well as the particular circumstances in which the chokehold was used.

The chokehold in this case was used against an individual who was resisting a lawful arrest. Hewitt was twisting and turning his body in an attempt to spit at Respondent. The chokehold lasted no more than three or four seconds. None of these surrounding circumstances justify Respondent's use of a chokehold, but they do provide important context for assessing his conduct.

In *Case No. 2015-13121* (Sept. 20, 2016), an 8-year officer with no prior history forfeited 15 vacation days in a case where the chokehold lasted 16 seconds. It too was an arrest of a violent suspect and there was a hostile crowd gathered. In *Case No. 2014-12925* (Feb. 16, 2016), a 21-year officer with two prior disciplinary cases forfeited 15 vacation days in a chokehold case where, like here, the individual was resisting arrest. In that case too, there were other people physically intervening in the officer's attempt to handcuff the individual.

The CCRB's recommendation of 10 vacation days is well taken. Respondent has been with the Department close to 20 years and has no prior disciplinary history. He has excellent recommendations and several commendations. He used a prohibited chokehold for approximately three to four seconds, but did so while he was struggling to secure a resisting individual that threatened to spit on him. Under the totality of the circumstances in this matter, the tribunal recommends that Respondent forfeit 10 vacation days as an appropriate penalty.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE RICHARD THOMAS
TAX REGISTRY NO. 919776
DISCIPLINARY CASE NO. 2015-12991

Respondent was appointed to the Department on April 15, 1997. He received 4.5 overall ratings of "Extremely Competent/Highly Competent" on his last three annual performance evaluations in 2014, 2015 and 2016. He has one medal for Excellent Police Duty and one medal for Meritorious Police Duty. [REDACTED]

Respondent has no prior disciplinary history.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials